

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Proposing rule making related to claims and fees for indigent adoption services and providing an opportunity for public comment

The State Public Defender hereby proposes to amend Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 13B.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815 and 2021 Iowa Acts, House Files 743 and 861.

Purpose and Summary

These proposed amendments are intended to implement the procedure for submission of claims by attorneys appointed to represent an indigent party who files an adoption petition to adopt a child who was the subject of a termination of parental rights proceeding pursuant to Iowa Code chapter 232. The amendments also set the attorney fee limitations for the number of hours of attorney time which may be claimed for those services without securing a court order to exceed the maximum number of hours. These proposed amendments are in response to the enactment of 2021 Iowa Acts, House File 743. Also, the amendments conform the administrative rules of the Office of the State Public Defender to the enactment of 2021 Iowa Acts, House File 861, section 24, which provides a \$3-per-hour across-the-board increase in the hourly rates paid to private attorneys who accept court appointments to represent indigent clients.

Fiscal Impact

Legislative enactment of the \$3-per-hour rate increase is estimated to increase annual costs to the Indigent Defense Fund by approximately \$1,500,000 beginning FY 2022. In addition, the enactment by the Legislature of House File 743, providing for court-appointed attorneys for indigent adoptive parents of a child who has been subject to a termination of parental rights under Iowa Code chapter 232, is likely to result in an additional charge to the Indigent Defense Fund in the amount of \$660 to \$1,320 per adoption, but the number of adoptions that will be of the type covered by House File 743 is unknown.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office of the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office no later than 4:30 p.m. on October 12, 2021. Comments should be directed to:

Kurt Swaim
Office of the State Public Defender
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: kswaim@spd.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 12.1(1) as follows:

12.1(1) The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempt; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; filing by an indigent party of an adoption petition under Iowa Code section 600.3 to adopt a child who was the subject of a termination of parental rights proceeding under Iowa Code chapter 232; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent’s right to transcript on appeal under Iowa Code section 814.9; indigent’s application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

ITEM 2. Amend subrule 12.4(1) as follows:

12.4(1) Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019, and before July 1, 2021:

Attorney time:	Class A felonies	\$73/hour
	Class B felonies	\$68/hour
	All other criminal cases	\$63/hour
	All other cases	\$63/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2021:

<u>Attorney time:</u>	<u>Class A felonies</u>	<u>\$76/hour</u>
	<u>Class B felonies</u>	<u>\$71/hour</u>
	<u>All other criminal cases</u>	<u>\$66/hour</u>
	<u>All other cases</u>	<u>\$66/hour</u>
<u>Paralegal time:</u>		<u>\$25/hour</u>

ITEM 3. Amend subrule 12.6(2) as follows:

12.6(2) *Juvenile cases.* The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile and adoption cases:

Delinquency (through disposition)	20
Child in need of assistance (CINA) (through disposition)	20
Termination of parental rights (TPR) (through disposition)	30
Juvenile court review and other postdispositional court hearings	5
Judicial bypass hearings	3
Juvenile commitment hearings	3
Juvenile petition on appeal	10
Motion for further review after petition on appeal	5
<u>Representation of adopting party in adoption following Iowa</u>	<u>5</u>
<u>Code chapter 232, termination of parental rights</u>	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is 20 hours for all four proceedings, not 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to 20 hours for the child in need of assistance case and up to 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.